

Senate Study Bill 3038 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

A BILL FOR

1 An Act relating to the opening, administration, and termination
2 of adult and minor guardianships and conservatorships, and
3 including effective date and applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 232D.301, subsection 4, Code 2020, is
2 amended to read as follows:

3 4. The petition shall state whether a limited guardianship
4 is appropriate, and whether a conservatorship for the minor is
5 needed or already in existence.

6 Sec. 2. Section 232D.302, subsection 2, Code 2020, is
7 amended to read as follows:

8 2. Notice shall be served upon the minor's known parents
9 listed in the petition in accordance with the rules of civil
10 procedure. If the parent has not filed a consent to the
11 appointment of a guardian, the notice shall inform any parent
12 named in the petition that the parent may be entitled to
13 representation under the conditions described in section
14 232D.304.

15 Sec. 3. Section 232D.305, subsection 1, Code 2020, is
16 amended to read as follows:

17 1. The court may appoint a court visitor for the minor. A
18 person is qualified to serve as a court visitor if the person
19 has demonstrated sufficient knowledge of guardianships to
20 adequately perform the duties in subsection 3.

21 Sec. 4. Section 232D.401, subsections 1 and 2, Code 2020,
22 are amended to read as follows:

23 1. The order by the court appointing a guardian for a minor
24 shall state the basis for the order and the date on which the
25 first reporting period for the guardianship will end.

26 2. The order by the court appointing a guardian for a minor
27 shall state whether the guardianship is a limited guardianship
28 and whether a conservator for the minor exists or a petition
29 for a conservatorship has been filed.

30 Sec. 5. Section 232D.401, subsection 3, paragraph e, Code
31 2020, is amended to read as follows:

32 e. Applying for and receiving funds and benefits payable
33 for the support of the minor if the minor does not have a
34 conservator. If the minor has a conservator, the guardian
35 shall notify the conservator at least ten days before applying

1 for funds or benefits for the support of the minor.

2 Sec. 6. Section 232D.501, subsection 1, paragraph a, Code
3 2020, is amended by adding the following new subparagraph:

4 NEW SUBPARAGRAPH. (7) The guardian's plan, if any, for
5 applying for funds or benefits to support the minor.

6 Sec. 7. Section 232D.501, subsection 1, paragraph b, Code
7 2020, is amended by adding the following new subparagraph:

8 NEW SUBPARAGRAPH. (11) The results of the guardian's
9 efforts to apply for funds or benefits for the minor, and
10 an accounting for the use of such funds or benefits by the
11 guardian.

12 Sec. 8. Section 232D.501, subsection 4, Code 2020, is
13 amended to read as follows:

14 4. Reports of the guardian shall be reviewed and approved
15 by the court. If the total value of funds or benefits retained
16 by the guardian for the minor's benefit exceeds the amount
17 specified in section 633.555, the court shall determine whether
18 a conservatorship is appropriate for the minor.

19 Sec. 9. Section 633.556, subsection 5, paragraph a, Code
20 2020, is amended to read as follows:

21 a. The name and address of the proposed guardian or
22 conservator and the reason the proposed guardian or conservator
23 should be selected.

24 Sec. 10. Section 633.556, subsection 8, Code 2020, is
25 amended to read as follows:

26 8. The A petition for conservator shall provide a brief
27 description of the respondent's alleged functional limitations
28 that make the respondent unable to communicate or carry out
29 important decisions concerning the respondent's financial
30 affairs. A petition for guardianship shall provide a brief
31 description of the respondent's alleged functional limitations
32 that make the respondent unable to provide for the respondent's
33 safety, or to provide for necessities.

34 Sec. 11. Section 633.560, subsection 3, Code 2020, is
35 amended to read as follows:

1 3. The court shall require the proposed guardian or
2 conservator to attend the hearing on the petition but the court
3 may excuse the proposed guardian's or conservator's attendance
4 for good cause shown.

5 Sec. 12. Section 633.561, subsection 1, paragraph a, Code
6 2020, is amended to read as follows:

7 a. If the respondent is an adult ~~and is not the petitioner,~~
8 the respondent is entitled to representation by an attorney.
9 Upon the filing of the petition, the court shall appoint an
10 attorney to represent the respondent, set a hearing on the
11 petition, and provide for notice of the appointment of counsel
12 and the date for hearing.

13 Sec. 13. Section 633.561, subsection 4, paragraphs c and f,
14 Code 2020, are amended to read as follows:

15 c. Ensure that the respondent has been properly advised of
16 the respondent's rights in a guardianship or conservatorship
17 proceeding.

18 f. Ensure that the guardianship or conservatorship
19 procedures conform to the statutory and due process
20 requirements of Iowa law.

21 Sec. 14. Section 633.561, subsection 5, paragraphs a and b,
22 Code 2020, are amended to read as follows:

23 a. Inform the respondent of the effects of the order entered
24 for appointment of guardian or conservator.

25 b. Advise the respondent of the respondent's rights to
26 petition for modification or termination of the guardianship
27 or conservatorship.

28 Sec. 15. Section 633.561, subsection 6, Code 2020, is
29 amended to read as follows:

30 6. If the court determines that it would be in the
31 respondent's best interest to have legal representation
32 with respect to any further proceedings in a guardianship
33 or conservatorship, the court may appoint an attorney to
34 represent the respondent at the expense of the respondent or
35 the respondent's estate, or if the respondent is indigent the

1 cost of the court appointed attorney shall be assessed against
2 the county in which the proceedings are pending.

3 Sec. 16. Section 633.562, subsection 1, Code 2020, is
4 amended to read as follows:

5 1. If the court determines that the appointment of a court
6 visitor would be in the best interest of the respondent,
7 the court shall appoint a court visitor at the expense
8 of the respondent or the respondent's estate, or, if the
9 respondent is indigent, the cost of the court visitor shall
10 be assessed against the county in which the proceedings are
11 pending. The court may appoint any qualified person as a court
12 visitor in a guardianship or conservatorship proceeding. A
13 person is qualified to serve in this capacity if the person
14 has demonstrated sufficient knowledge of guardianships or
15 conservatorships to adequately perform the duties in subsection
16 3.

17 Sec. 17. Section 633.562, subsection 5, paragraphs a and b,
18 Code 2020, are amended to read as follows:

19 a. A recommendation regarding the appropriateness of a
20 limited guardianship or conservatorship for the respondent,
21 including whether less restrictive alternatives are available.

22 b. A statement of the qualifications of the guardian or
23 conservator together with a statement of whether the respondent
24 has expressed agreement with the appointment of the proposed
25 guardian or conservator.

26 Sec. 18. Section 633.569, Code 2020, is amended to read as
27 follows:

28 **633.569 Emergency appointment of temporary guardian or**
29 **conservator.**

30 1. A person authorized to file a petition under section
31 ~~633.552, 633.553, or 633.554~~ 633.556 or 633.557 may file an
32 application for the emergency appointment of a temporary
33 guardian or conservator.

34 2. Such application shall state all of the following:

35 0a. The name and address of the petitioner and the

1 petitioner's relationship to the respondent.

2 *a.* The name and address of the respondent.

3 *b.* The name and address of the proposed guardian or
4 conservator and the reason the proposed guardian or conservator
5 should be selected.

6 *0c.* The names and addresses, to the extent known, of any
7 other persons who must be named in a petition for appointment
8 of a guardian or conservator under section 633.556 or 633.557.

9 *c.* The reason the emergency appointment of a temporary
10 guardian or conservator is sought.

11 3. The court may enter an ex parte order appointing a
12 temporary guardian or conservator on an emergency basis
13 under this section if the court finds by clear and convincing
14 evidence that all of the following conditions are met:

15 *a.* There is not sufficient time to file a petition and hold
16 a hearing pursuant to section 633.552, 633.553, or 633.554
17 633.556, 633.557, or 633.560.

18 *b.* The appointment of a temporary guardian or conservator
19 is necessary to avoid immediate ~~or~~ and irreparable harm to the
20 respondent before a hearing with notice to the respondent can
21 be held.

22 *c.* There is reason to believe that the basis for appointment
23 of guardian or conservator exists under section 633.552,
24 633.553, or 633.554.

25 04. Immediately on filing of an application for the
26 emergency appointment of a temporary guardian or conservator,
27 the court shall appoint an attorney to represent the respondent
28 in the proceeding.

29 4. Notice of a petition for the appointment of a temporary
30 guardian or conservator and the issuance of an ex parte
31 order appointing a temporary guardian or conservator shall be
32 provided not later than forty-eight hours after issuance of
33 the order of appointment to the respondent, the respondent's
34 attorney, and any other person the court determines should
35 receive notice. Notice shall be provided by personal service

1 unless otherwise directed by the court.

2 ~~5. Upon the issuance of an ex parte order, if the respondent~~
3 ~~is an adult, the respondent may file a request for a hearing.~~
4 ~~If the respondent is a minor, the respondent, a parent having~~
5 ~~legal custody of the respondent, or any other person having~~
6 ~~legal custody of the respondent may file a written request for~~
7 ~~a hearing. Such hearing shall be held no later than seven days~~
8 ~~after the filing of a written request. A hearing shall be held~~
9 ~~not more than seven days after the issuance of an ex parte~~
10 ~~order appointing a temporary guardian or conservator.~~

11 6. The powers of the temporary guardian or conservator
12 set forth in the order of the court shall be limited to those
13 necessary to address the emergency situation requiring the
14 appointment of a temporary guardian or conservator.

15 7. The temporary guardianship or conservatorship shall
16 terminate within thirty days after the order is issued.

17 8. The temporary guardian or conservator shall submit any
18 report the court requires.

19 Sec. 19. Section 633.570, subsections 1 and 2, Code 2020,
20 are amended to read as follows:

21 1. In a proceeding for the appointment of a guardian, the
22 respondent shall be given written notice which advises the
23 respondent of the powers that a guardian may exercise without
24 court approval pursuant to [section 633.635, subsection 2](#), and
25 the powers that the guardian may exercise only with court
26 approval pursuant to [section 633.635, subsection 3](#), and the
27 pertinent powers the guardian may exercise as a fiduciary.

28 2. In a proceeding for the appointment of a conservator,
29 the respondent shall be given written notice which advises
30 the respondent of the powers that a conservator may exercise
31 without court approval ~~pursuant to section 633.646, including~~
32 the pertinent powers the conservator may exercise as a
33 fiduciary, and the powers that the guardian conservator may
34 exercise only with court approval ~~pursuant to section 633.647.~~

35 Sec. 20. Section 633.635, subsection 1, Code 2020, is

1 amended to read as follows:

2 1. The order by the court appointing a guardian shall state
3 the basis for the guardianship pursuant to section 633.552
4 and the date on which the first reporting period for the
5 guardianship shall end.

6 Sec. 21. Section 633.635, subsection 3, paragraph b, Code
7 2020, is amended by adding the following new subparagraph:

8 NEW SUBPARAGRAPH. (4) Any major elective surgery or any
9 other nonemergency major medical procedure, unless advance
10 notice of the procedure was included in the guardian's initial
11 care plan that was approved by the court. For purposes of
12 this subparagraph, "major elective surgery" and "nonemergency
13 major medical procedure" do not include the provision of
14 routine physical and dental examinations and procedures under
15 anesthesia, if the use of anesthesia is necessitated by the
16 physical or mental disability of the protected person, and if
17 the anesthesia is provided within the scope of the health care
18 practitioner's scope of practice.

19 Sec. 22. Section 633.641, subsection 3, Code 2020, is
20 amended to read as follows:

21 ~~3. If a protected person has executed a valid power of~~
22 ~~attorney under [chapter 633B](#), the conservator shall act in~~
23 ~~accordance with the applicable provisions of [chapter 633B](#).~~
24 If the court appoints a conservator for a protected person
25 who has previously executed a valid power of attorney under
26 chapter 633B, the power of attorney is suspended unless the
27 power of attorney provides otherwise or the court appointing
28 the conservator orders that the power of attorney should
29 continue. If the power of attorney continues, the agent is
30 accountable to the conservator as well as to the principal.
31 The power of attorney shall be reinstated upon termination of
32 the conservatorship as a result of the principal regaining
33 capacity.

34 Sec. 23. Section 633.642, unnumbered paragraph 1, Code
35 2020, is amended to read as follows:

1 Except as expressly modified in this section, conservators
2 shall have the pertinent powers relating to fiduciaries and the
3 authority to collect, receive, and receipt for any principal,
4 income, or other asset of the protected person. Unless the
5 court orders otherwise ordered by the court, a conservator must
6 give notice to persons entitled to notice and receive specific
7 prior authorization by the court before the conservator may
8 take any other action on behalf of the protected person. These
9 other powers requiring court approval include the authority of
10 the conservator to:

11 Sec. 24. Section 633.669, subsection 1, paragraph a,
12 unnumbered paragraph 1, Code 2020, is amended to read as
13 follows:

14 An initial care plan filed within sixty days of appointment.
15 In the case of guardianships established before January 1,
16 2020, a guardian shall file the plan within sixty days after
17 the close of the next reporting period of the guardianship
18 following January 1, 2020. The information in the initial
19 care plan shall include but not be limited to the following
20 information:

21 Sec. 25. Section 633.669, subsection 1, paragraph a,
22 subparagraph (7), Code 2020, is amended to read as follows:

23 (7) The guardian's plan for facilitating contacts between
24 the protected person and the protected person's family members
25 and other ~~significant~~ persons significant in the life of the
26 protected person.

27 Sec. 26. Section 633.669, subsection 1, paragraph a, Code
28 2020, is amended by adding the following new subparagraph:

29 NEW SUBPARAGRAPH. (9) The guardian shall file an amended
30 plan when there has been a significant change in circumstance
31 or the guardian seeks to deviate significantly from the plan.
32 The guardian must obtain court approval of the amended plan
33 before implementing any of its provisions.

34 Sec. 27. Section 633.669, subsection 1, paragraph b,
35 unnumbered paragraph 1, Code 2020, is amended to read as

1 follows:

2 An annual report, filed within sixty days of the close of
3 the reporting period, unless the court otherwise orders on
4 good cause shown. The ~~information in the~~ annual report shall
5 include but not be limited to the following information:

6 Sec. 28. Section 633.670, subsection 1, unnumbered
7 paragraph 1, Code 2020, is amended to read as follows:

8 A conservator shall file an initial plan for protecting,
9 managing, investing, expending, and distributing the assets
10 of the conservatorship estate within ninety days after
11 appointment. In the case of conservatorships established
12 before January 1, 2020, a conservator shall file the plan
13 within ninety days after the close of the next reporting period
14 ending after January 1, 2020. The plan must be based on the
15 needs of the protected person and take into account the best
16 interest of the protected person as well as the protected
17 person's preference, values, and prior directions to the extent
18 known to, or reasonably ascertainable by, the conservator.

19 Sec. 29. Section 633.670, subsection 1, paragraph a,
20 subparagraph (4), Code 2020, is amended by striking the
21 subparagraph.

22 Sec. 30. Section 633.670, subsection 1, paragraphs b, c, and
23 d, Code 2020, are amended to read as follows:

24 ~~b. Within two days after filing the initial plan, the~~
25 The conservator shall give provide notice of the filing of
26 the initial plan ~~with~~ and a copy of the initial plan to the
27 protected person, the protected person's attorney and court
28 ~~advisor~~ visitor, if any, and others as directed by the court.
29 The notice must state that any person entitled to a copy of
30 the plan must file any objections to the plan not later than
31 ~~fifteen days after it is filed~~ twenty days from the date of
32 mailing notice of filing the initial plan.

33 ~~c. At least~~ If no objections have been filed within twenty
34 days after the plan has been filed, the court shall review
35 ~~and determine whether the plan should be approved or revised,~~

1 ~~after considering objections filed and whether the plan is~~
2 ~~consistent with the conservator's powers and duties~~ mailing
3 notice of filing the initial plan, the conservator shall submit
4 a proposed order to the court approving the initial plan.
5 Upon the court's approval of the plan under this subsection,
6 the conservator shall provide a copy of the approved plan and
7 order approving the plan to the protected person, the protected
8 person's attorney and court visitor, if any, and others as
9 directed by the court.

10 ~~d. After approval by the court, the conservator shall~~
11 ~~provide a copy of the approved plan and order approving the~~
12 ~~plan to the protected person, the protected person's attorney~~
13 ~~and court advisor, if any, and others as directed by the court.~~
14 If any objections to the proposed plan are filed within twenty
15 days after the conservator has mailed notice of filing the
16 plan, the court shall set the matter for hearing and provide
17 notice of the hearing date, time, and place to the same parties
18 who were sent copies of the initial plan. Following the
19 hearing on the conservator's proposed plan, the conservator
20 shall provide a copy of the approved plan and order approving
21 the plan to the protected person, the protected person's
22 attorney and court visitor, if any, and others as directed by
23 the court.

24 Sec. 31. Section 633.670, subsection 2, Code 2020, is
25 amended to read as follows:

26 2. A conservator shall file an inventory of the protected
27 person's assets within ninety days after appointment which
28 includes an oath or affirmation that the inventory is believed
29 to be complete and accurate as far as information permits.
30 Copies of the inventory shall be provided to the protected
31 person, the protected person's attorney and court ~~advisor~~
32 visitor, if any, and others as directed by the court. When
33 the conservator receives additional property of the protected
34 person, or becomes aware of its existence, a description of the
35 property shall be included in the conservator's next annual

1 report.

2 Sec. 32. Section 633.670, subsection 3, paragraph b,
3 subparagraph (1), Code 2020, is amended to read as follows:

4 (1) ~~On an annual basis within~~ Within sixty days of the end
5 of the reporting period unless the court orders an extension
6 for good cause shown in accordance with the rules of probate
7 procedure.

8 Sec. 33. Section 633.670, subsection 3, paragraph c, Code
9 2020, is amended to read as follows:

10 c. Reports required by this section shall be served on the
11 protected person's attorney and court ~~advisor~~ visitor, if any,
12 and the veterans administration if the protected person is
13 receiving veterans benefits.

14 Sec. 34. Section 633.675, subsections 2 and 3, Code 2020,
15 are amended to read as follows:

16 2. The court shall terminate a guardianship if ~~it the~~ the
17 court finds ~~by clear and convincing evidence~~ that the basis
18 for appointing a guardian pursuant to section 633.552 is not
19 satisfied.

20 3. The court shall terminate a conservatorship if the court
21 finds ~~by clear and convincing evidence~~ that the basis for
22 appointing a conservator pursuant to section 633.553 or 633.554
23 is not satisfied.

24 Sec. 35. EFFECTIVE DATE. The following, being deemed of
25 immediate importance, take effect upon enactment:

26 1. The sections of this Act amending section 633.669.

27 2. The sections of this Act amending section 633.670.

28 Sec. 36. RETROACTIVE APPLICABILITY. The following apply
29 retroactively to January 1, 2020:

30 1. The sections of this Act amending section 633.669.

31 2. The sections of this Act amending section 633.670.

32 EXPLANATION

33 The inclusion of this explanation does not constitute agreement with
34 the explanation's substance by the members of the general assembly.

35 This bill relates to the opening, administration,

1 and termination of adult and minor guardianships and
2 conservatorships, and includes effective date and applicability
3 provisions.

4 The bill provides that a petition for a minor guardianship
5 must state whether a minor needs or currently has a
6 conservatorship. The bill requires that notice that a petition
7 has been filed be given to a parent who has not consented
8 to a guardianship and that court may appoint an attorney to
9 represent the parent.

10 The bill describes who is qualified to serve as a court
11 visitor for a minor.

12 The bill adds additional report requirements for cases where
13 a minor has a conservatorship, requires the guardian to report
14 to the district court in the case of minor conservatorships,
15 and requires that the reporting period be listed on the report.

16 The bill also amends information in a guardian report when
17 guardians are authorized to apply for funds or benefits for a
18 minor.

19 As relates to a petition for an adult guardianship or
20 conservatorship, the bill amends several Code sections to
21 include both guardians and conservators.

22 The bill amends current law to provide that a petition
23 must name the proposed guardian or conservator. Further,
24 the petition must provide a brief description of the adult's
25 alleged functional limitations which makes the person unable to
26 provide for the person's safety or to provide for necessities.

27 The bill describes who is qualified to serve as a court
28 visitor for an adult.

29 The bill amends the provisions involved in the emergency
30 appointment of a temporary guardian or conservator, and
31 provides that any person authorized to file a petition for
32 guardianship or conservatorship may file for the emergency
33 appointment of a guardian or conservator. Prior law only
34 authorized a guardian to file an emergency petition.

35 The bill provides that conservators have all of the

1 pertinent powers of a fiduciary unless limited by the court or
2 their personalized financial plan.

3 The bill requires that a guardian have a prior court order
4 for major elective surgeries or other major nonemergency
5 medical procedures outside the initial care plan, and requires
6 that the dates of the reporting period should be contained in
7 the order.

8 The bill provides that if a court appoints a conservator for
9 a protected person who has previously executed a valid power of
10 attorney, the power of attorney is suspended unless the power
11 of attorney provides otherwise or the court appointing the
12 conservator orders that the power of attorney should continue.
13 Further, if the power of attorney continues, the agent is
14 accountable to the conservator, and the power of attorney will
15 be reinstated at the termination of the conservatorship as a
16 result of the protected person regaining capacity.

17 The bill amends reporting requirements for guardians, and
18 requires that guardians must obtain court approval prior to any
19 significant deviation from the initial care plan filed with the
20 court. These changes are immediately effective and retroactive
21 to January 1, 2020.

22 The bill amends reporting requirements for conservators.
23 The conservator must give notice of filing a plan, and if no
24 objection is made within 20 days, the conservator must submit
25 a proposed order to the court approving the initial plan. If
26 there are objections to the plan, the court must set the matter
27 for hearing. These changes are immediately effective and
28 retroactive to January 1, 2020.

29 The bill removes the language "by clear and convincing
30 evidence" from the Code section concerning the causes for
31 termination of a guardianship or conservatorship.